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CITY AND COUNTY OF SAN FRANCISCO

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EUGENE F. DANTZLER

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

EUGENE F. DANTZLER,

Plaintiff,

vs.

CITY AND COUNTY OF  
SAN FRANCISCO,

Defendant.

Case No. C16-3119 EMC

**STIPULATION AND AMENDED [PROPOSED]  
ORDER TO CONTINUE EXPERT  
DISCOVERY AND RE: DEFENDANT'S  
PSYCHOLOGICAL EVALUATION OF  
PLAINTIFF**

## STIPULATION

Plaintiff Eugene Dantzler ("Plaintiff") and Defendant City and County of San Francisco ("Defendant" or "City") (collectively, the "Parties"), by and through their attorneys, enter the following stipulation regarding their mutual request to continue expert discovery and Defendant's psychological evaluation of Plaintiff pursuant to Federal Rule of Civil Procedure 35(b)(6):

1. On July 13, 2017, Plaintiff appeared for deposition at the Office of the City Attorney, 1390 Market Street, Fifth Floor, San Francisco, CA 94102. This was Plaintiff's first appearance for deposition.

2. At deposition, Plaintiff disclosed that prior to his employment with the City he served in the military. He testified that while enlisted he experienced a service-related incident that resulted in diagnosis of multiple mental health conditions. He also testified that, from the date of the service-related incident until present, he has received mental health treatment for such conditions from providers at the United States Department of Veterans Affairs and Kaiser Permanente.

3. Also at deposition, Plaintiff testified that he seeks damages for emotional distress associated with the loss of his job with Defendant. He testified that he has suffered "more depression" and "low self-esteem" as a result of the job loss. Before deposition, Plaintiff's specific mental health conditions had not been disclosed to Defendant in the litigation.

4. The Parties jointly request a continuance of the expert discovery deadlines. The current expert discovery deadlines are as follows: September 7 (initial reports); September 28 (rebuttal reports); October 19 (expert discovery cut-off). (Dkt. No. 25) These dates are far in advance of the last day for hearing on dispositive motions (November 30) and the trial date (March 12, 2018). Defendant, with Plaintiff counsel's consent, proposed the existing expert discovery deadlines before it was aware of Plaintiff's unique mental health conditions and had an opportunity to evaluate their potential impact on Plaintiff's claim for emotional distress damages. With this information now revealed, the City has determined it will need to retain an expert witness to opine as to the impact of Plaintiff's pre-existing mental health conditions on his claim for emotional distress damages. Because of the expense associated with such discovery and because it will only become relevant if the Court

1 denies the City's motion for summary judgment (which the City intends to file on October 26 and have  
2 heard on November 30), the Parties jointly request that the Court postpone expert discovery until  
3 closer to trial, as set forth in the proposed order. There is good cause to do so because such  
4 information only becomes relevant if the case proceeds to trial and Plaintiff's potential damage  
5 recovery becomes at issue. Moreover, postponing this part of the litigation may avoid expense of  
6 certain costs associated with expert discovery, should the Court grant the City's motion.

7         6.       The Parties also agree that, pursuant to Federal Rule of Civil Procedure 35, Plaintiff  
8 Eugene Dantzler will appear for a psychological evaluation on December 18, 2017 at 9:30 a.m. at the  
9 office of Joanna Berg, Ph.D at 5665 College Avenue, Suite 240 East, Oakland, California 94618. Dr.  
10 Berg will perform an interview and a standard battery of psychological tests, including but not limited  
11 to: (1) Minnesota Multiphasic Personality Inventory; (2) MCMI; (3) Rorschach Performance  
12 Assessment System; and (4) Rotter Incomplete Sentence Blank. It is anticipated that the examination  
13 will take a minimum of six hours. Plaintiff should bring his reading glasses, if any, and any  
14 medication he is currently taking. Plaintiff understands and agrees that he is not entitled to have his  
15 attorney present at the examination and agrees to attend the examination without any other person or  
16 representative.

17         7.       Dr. Berg will make an audio recording of the examination and Plaintiff consents to the  
18 same.

19         8.       Plaintiff will not sign any authorization or consent form for Dr. Berg, nor will he fill  
20 out any forms, charts, new patient records, insurance information, or histories for Dr. Berg or her  
21 office. Plaintiff will complete written tests.

22         9.       The evaluation of Plaintiff will be limited to psychological and neuropsychological  
23 evaluation and will not include any medical diagnostic tests or physical examination other than  
24 pertaining to the psychological and neuropsychological evaluation.

25         10.      Dr. Berg must preserve all documents relating to these tests and procedures, including  
26 any and all notes made by Dr. Berg and her staff at any time before, during or after the examination,  
27 all raw data generated during the examination, all tests, forms, score sheets, or other writings

generated during the examination whether generated by Plaintiff or Dr. Berg. Dr. Berg must produce all raw test data to Plaintiff's designated expert in psychiatry/psychology, if any, within a reasonable period after the completion of her examination and not less than one week after Plaintiff identifies his designated expert and, through counsel, has requested production of such data.

11. This examination, any audio recordings of this examination, Dr. Berg's report, all medical and psychotherapeutic information provided to Dr. Berg, and all test data are subject to the protective order already in place in this matter.

12. The examiner's report will be timely produced to provide to Plaintiff's counsel pursuant to Federal Rule of Civil Procedure 35 within 30 days after her completion of her examination of Plaintiff. This stipulation constitutes Plaintiff's formal request under Rule 35.

13. Plaintiff also agrees to sign waivers authorizing release of his mental health records from the United States Department of Veterans Affairs, located at the VA Martinez Outpatient Clinic, 150 Muir Road, Martinez, CA 94553 for mental health records from July 1, 2000 until present, and from Kaiser Permanente, located in Oakland, California for mental health records from January 1, 2012 through December 31, 2014. Plaintiff agrees to provide the signed waivers to the City by Wednesday, August 16, 2017. Plaintiff agrees that, if the City is required to file a motion to compel timely production of these records from either the United States Department of Veterans Affairs or Kaiser Permanente that Plaintiff will not oppose the City's motion.

14. Defendant shall provide a copy of this stipulation to Dr. Berg reasonably in advance of the examination in an effort to minimize the possibility of disagreement or misunderstanding at the time of examination.

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1 SO STIPULATED.

2 Dated: August 10, 2017

DENNIS J. HERRERA

City Attorney

KATHARINE HOBIN PORTER

Chief Labor Attorney

JENICA D. MALDONADO

Deputy City Attorney

7 By: /s/Jenica D. Maldonado

JENICA D. MALDONADO

Attorneys for Defendant

CITY AND COUNTY OF SAN FRANCISCO

10 Dated: August 10, 2017

LAW OFFICES OF BRIAN K. ROSS<sup>1</sup>

12 By: /s/Brian K. Ross

BRIAN K. ROSS, ESQ.

Attorney for Plaintiff

EUGENE F. DANTZLER

26 <sup>1</sup> Pursuant to General Order No. 45, the counsel for the City attests that concurrence in the  
27 filing of this document has been obtained from the other signatory, which shall serve in lieu of his  
signature on the document.

**ORDER**

Having considered the Parties' stipulation, and good cause appearing, the Court modifies the scheduling order as follows:

	Current Date	New Date
Opening Expert Reports:	September 7, 2017	January <sup>10</sup> <del>17</del> , 2018
Rebuttal Reports:	September 28, 2017	January <sup>29</sup> <del>12</del> , 2018
Expert Discovery Cut-off:	October 19, 2017	February <sup>12</sup> <del>26</del> , 2018

All other dates set forth in the Case Management and Pretrial Order for Jury Trial (Dkt. No. 25) remain unchanged.

Moreover, the independent medical examination ("IME") of Plaintiff will take place on Friday December 18, 2017 in accordance with Federal Rule of Civil Procedure 35(b)(6) and pursuant to the terms and conditions set forth in the Parties' stipulation. If necessary, the Parties may mutually agree on an alternative date and time for the IME, provided that the examination takes place before December 18, 2017 and otherwise remains subject to the terms and conditions set forth in the stipulation.

**IT IS SO ORDERED.**

Dated: August 11, 2017

